WAZURAIYAH MOHAMAD

v.

MEGAT NAJMUDDIN DATO' SERI DR. HJ. MEGAT KHAS & ORS.

HIGH COURT MALAYA, KOTA BHARU
ABDUL MALEK AHMAD J
[ORIGINATING MOTION NO. l6 OF 1984]
1 APRIL 1985

LAND LAW: *Caveats - Definition of caveatable interest - Sale and purchase - Private caveat - Principles in relation to situation where caveatee is not registered proprietor - Whether person aggrieved - Section 327 of National Land Code - Serious question to be tried - Balance of convenience - Status quo - Malay Reservation land - Sections 7, 12 of Kelantan Malay Reservations Enactment 1930 and s. 104 of Kelantan Land Enactment 1938.*

On 17 March 1983, Zaid Holdings ("ZH") passed a Directors' Resolution which approved the purchase of a piece of land which was Malay Reservation land ("the said land") for RM165,000. ZH also substituted itself for Tengku Zaid bin Tengku Ahmad ("TZ") in the joint venture agreement between Gunung Petaling ("GP") and TZ with regard to the said land. On 18 March 1983, TZ being the registered proprietor of the said land, agreed to sell the land to ZH for RM165,000 subject to certain terms and conditions. On 23 March 1983, ZH passed a resolution that TZ should give a power of attorney to one Rosnani Abdul Hamid ("RH") as regards all matters pertaining to the said land. Payment was made as regards the said land on 28 March 1983. On 29 March 1983, ZH appointed the applicant as trustee in respect of the said land and on 7 May 1983, TZ executed a transfer in respect of the said land in the applicant's favour. 4 days later TZ passed away. The respondents entered a caveat on the said land on 29 June 1983. The applicant applied for the removal of this private caveat but her application was dismissed. She is now appealing against that dismissal.

Held:

[1] The learned Judge approved and applied *Eng Mee Yong & Ors. v. V. Letchumanan* [1979] 2 MLJ 212 and said that where the applicant under s. 327 of the National Land Code is someone other than the caveatee (the registered proprietor) he has no registered title to rely upon as *prima facie* evidence of his interest in the land and it is for him to begin by satisfying the Court that there are sufficient grounds in fact and in law for treating him as a person claiming such an interest in the land, as would, if it were established, make him aggrieved by the existence of the caveat. On the facts in the instant case, the applicant had not raised sufficient grounds to satisfy the Court that she was aggrieved by the existence of the caveat.

[2] The Court was of the opinion that the respondents had in fact succeeded in proving to the Court's satisfaction that their claim to an interest in the property does raise a serious question to be tried and having done so, they have also shown that on the balance of convenience it would be better to maintain the *status quo* until the trial of the action by preventing the caveatee from disposing of his land to some third party.

[3] There is nothing in the affidavits to show that any application of transfer from TZ to ZH had been made to the Kelantan Land Authorities and the Court was of the view that since the trust was conditional upon this, no trust had in fact taken place between TZ and the applicant.

[4] The purported sale and purchase of the said land from TZ to ZH on 18 March 1983 is beyond the scope of ss. 7 and 12 of the Kelantan Malay Reservations Enactment and s. 104 of the Kelantan Land Enactment 1938. The effect of the relevant provisions in these two Enactments amply show that only a person who is a Malay native of Kelantan can purchase the said land. There is nothing in the affidavit to show that the applicant falls within this category. The only saving provision would be the approval of the Ruler in Council but this would have to be specifically stated in the sale and purchase agreement.

[5] Since the sale and purchase agreement offended the relevant Enactments, it was on the face of it null and void and the consideration was irrevocable and no action would lie for its breach.

[6] The Court was of the view that since certain conditions and terms of the sale and purchase agreement were not compiled with, the sale and purchase agreement from TZ to ZH was not complete. There was also the question of TZ's motive in further assigning his interest under the joint venture agreement notwithstanding the fact that there was in existence a sale and purchase agreement.

[7] The purpose of a private caveat is to preserve the *status quo* pending the taking of timeous steps by the applicant (caveator here) to enforce his claim to an interest in the land by proceedings in the Courts. The respondents had in fact already filed an action for specific performance.

[8] It is abundantly clear that the applicant's grounds must fail in view of the fact that the respondents had a caveatable interest in the said land under the joint venture agreement. The rights of the respondents ought to be protected by the caveat.

[Application for removal of caveat dismissed with costs.]

Cases referred to:
Eng Mee Yong & Ors. v. V. Letchumanan [1979] 2 MLJ 212
Registrar of Titles, Johore v. Temenggong Securities Ltd. [1976] 2 MLJ 44

Legislation referred to:
Malay Reservations Enactment 1930 (Kelantan), ss. 7, 12
Land Enactment 1938 (Kelantan), s. 104
National Land Code 1965, s. 327

For the applicant - Manjit Singh; M/s. Sri Ram, Zulkifly & Kumar
For the respondents - Wong Swee Min; M/s. Megat Najmuddin, Leong & Co.

JUDGMENT

Abdul Malek Ahmad J:

The applicant is appealing against the dismissal of her application to remove Private Caveat Presentation No. 206 of 1983 Jilid 1 Folio 36 (hereinafter "the caveat") which was registered on the 29 June 1983 and entered by the respondents over the whole of the land held under Geran No. 10588 for lot No. 763 in the Mukim of Tanjong Chat in the State of Kelantan (hereinafter "the said land")

The basis of her application can be summarised in chronological order:

(a) on 17 March 1983 Zaid Holdings (hereinafter "ZH") passed a Directors' resolution approving the purchase of the said land for RM165,000 and substituting itself for Tengku Zaid bin Tengku Ahmad (hereinafter "TZ") in the joint venture agreement between Gunung Petaling (hereinafter "GP") and TZ with regard to the said land (Exhibit WM-1A);

(b) on 18 March 1983 the registered proprietor of the said land TZ agreed to sell the said land to ZH for RM165,000 subject to terms and conditions mentioned in a letter of the same date (Exhibit WM -1);

(c) on 23 March 1983 ZH resolved that TZ give a power of attorney to one Rosnani Abdul Hamid as regards all matters pertaining to the said land (Exhibits WM-4 and WM-5B);

(d) on 28 March 1983 TZ issued the acknowledgment and receipt for the payment of RM165,000 as regards the said land (Exhibits WM-2A and WM-2B);

(e) on 29 March 1983 ZH appointed the applicant as trustee in respect of the said land (Exhibit WM-9);

(f) on 7 May 1983 TZ executed a transfer in form 14A of the National Land Code in respect of the said land in the applicant's favour (Exhibit WM-5A);

(g) on 11 May 1983 TZ passed away;

(h) on 29 June 1983 the caveat was entered by the respondents on the said land (see Exhibit WM-6 as regards the application for entry of the caveat dated the 22 June 1983); and

(i) on 1 December 1983, the applicant's solicitors wrote to the respondents requiring them to remove the caveat (Exhibit WM-8).

The applicant's grounds are:

(a) that the respondents have no caveatable interest in the said land;

(b) that the respondents did not have any right to claim title to or any registrable interest in the said land or any right to such title or interest;

(c) that the said caveat was wrongly and improperly presented or lodged by the respondents.

By the third respondent's affidavits in reply, the respondents have raised the following points:

(a) difference in the spacing of the text and the signatures between exhibits WM-1A and MO-1b;

(b) the two letters written by TZ on 20 April 1983 to the respondents assigning two million ringgit of proceeds under the joint venture agreement between him and the respondents (Exhibits MO-2a and MO-2b) to Kumpulan Holdings Sdn. Bhd. Because of these, the respondents are questioning the authenticity of the entire sale and purchase transaction between TZ and ZH on 18th March 1983;

(c) the authenticity of the acknowledgment and receipt (Exhibits WM-2a and WM-2b) are being challenged by the estate of TZ;

(d) that the applicant has no *locus standi* to make this application as TZ is a native of Kelantan, that the said land is Malay Reservation land (Exhibit MO-3), that ZH is not a native Malay as defined by the Kelantan Malay Reservations Enactment 1930 and that the applicant has not established herself as a native Malay which even if she is, she is a mere trustee and the Enactment prohibited any dealings by native Malays in favour of a party that is not a native of Kelantan;

(e) that the said attorney Rosnani bt Abdul Hamid having executed the resolution dated 17 March 1983 which stipulated that ZH be substituted in place of TZ in respect of the joint venture agreement with GP could witness the assignment of TZ's interest to Kumpulan Holdings Sdn. Bhd. on the 20 April 1983;

(f) that the said power of attorney on 23 March 1983 was improper and purportedly executed while TZ was in Singapore (Exhibit MO-4);

(g) by the agreement dated 5 January 1982 between TZ and GP (Exhibit WM-7), Clause IV(2) provided that the title to the said land be deposited with the developers' solicitors as stakeholders to enable them to deal with the said land;

(h) that by virtue of the agreement, GP had converted and subdivided the said land at a cost of RM101,472 and paid substantial legal, architectural and civil and structural engineering fees (Exhibit MO-5) and is paying annual quit rent of RM12,400;

(i) by an agreement dated 9 May 1983, GP had assigned part of their rights, interests, benefits, liabilities and obligations under the joint venture agreement to the respondents (Exhibit MO-6);

(j) that since TZ had deposited the title to the said land with the developers' solicitors, GP and the respondents have a lien over the said title:

(k) that the act of depositing the title with the GP's solicitors by TZ had impliedly fettered his rights to deal with the said land;

(l) the substantial performance by GP in relation to the agreement conferred an equitable interest on the respondents which the Court ought to protect;

(m) even if the sale and purchase agreement is held to be valid (which is denied) the respondents being first in time has priority over all other things being equal;

(n) by the resolution in exhibit WM-1A, ZH had recognised the joint venture agreement between GP and TZ; and

(o) since GP has filed proceedings for a declaration that GP is entitled to specific performance of the said joint venture agreement whether by ZH or the personal representatives of TZ and that the personal representatives of TZ are proceeding to file papers to challenge the claim of ZH (Exhibit MO-9), the interest of GP and the respondents should be protected.

Having given due consideration to the affidavits and arguments put forward by both Counsel, I was of the view that the application to remove the caveat ought to be dismissed for the following reasons:

(a) as has been held in *Eng Mee Yong & Ors. v. V. Letchumanan* [1979] 2 MLJ Page 212, where the applicant under s. 327 (of the National Land Code) is someone other than the caveatee (the registered proprietor), he has no registered title to rely upon as *prima facie* evidence of his interest in the land and it is for him to begin by satisfying the Court that there are sufficient grounds in fact and in law for treating him as a person claiming such an interest in the land as would, if it were established, make him aggrieved by the existence of the caveat - for the reasons enumerated below, I found on the facts that the applicant had not raised sufficient grounds to satisfy the Court that she was aggrieved by the existence of the caveat;

(b) in the same case it has also been held that the caveator must first satisfy the Court that on the evidence presented to it his claim to an interest in the property does raise a serious question to be tried and having done so, he must go on to show that on the balance of convenience it would be better to maintain the *status quo* until the trial of

the action by preventing the caveatee from disposing of his land to some third party - the Court was of the opinion that the respondents had in fact succeeded in proving this to the Court's satisfaction;

(c) the applicant in this case claims to be a trustee for ZH but as can be seen from exhibit WM-3, it is a trust conditional upon the application for transfer from TZ to ZH not being accepted by the Kelantan Land Authorities. There is nothing in the affidavits to show that any application had in fact been made and the Court was of the view that in consequence no trust had in fact taken place between TZ and the applicant;

(d) the purported sale and purchase of the said land from TZ to ZH on 18 March 1983 is, apart from the ambiguous purchase price in view of the second condition that ZH is to settle all of TZ's outstanding personal loans with Kumpulan Kesuma Sdn. Bhd. and Kumpulan Travel Sdn. Bhd., beyond the scope of ss. 7 and 12 of the Kelantan Malay Reservations Enactment 1930 and s. 104 of the Kelantan Land Enactment 1938. The effect of the relevant provisions in these two Enactments amply show that only a person who is a Malay native of Kelantan can purchase the said land. There is nothing in the affidavit to show that the applicant falls within this category and, in any case, ZH clearly cannot fall within it as has been further stated in the 3rd paragraph of Exhibit WM-1A. The only saving provision would be the approval of the Ruler in Council but then this would have to be specifically stated in the sale and purchase agreement;

(e) the Court held that since the purchase and sale agreement between TZ and ZH offended the relevant Enactments, it was on the face of it null and void and the consideration was irrecoverable and no action would lie for its breach;

(f) the Court was of the view that the sale and purchase from TZ and ZH cannot be said to be complete as apart from the purchase price of RM165,000, it was subject to the condition that ZH pay all outstanding loans of TZ to Kumpulan Kesuma Sdn. Bhd. and Kumpulan Travel Sdn. Bhd. There is no evidence to show what the amounts were and when or whether they were in fact paid;

(g) after the so-called sale and purchase transaction on 18 March 1983, TZ sent letters to GP on 20 April 1983, witnessed by his attorney, assigning two million ringgit of his interest to Kumpulan Holdings Sdn. Bhd. If there had in fact been a sale and purchase, why did TZ further assign his interest under the joint venture agreement with GP a month later?

(h) by virtue of the joint venture agreement with GP, TZ had in fact deposited the title with the GP's solicitors and had agreed not to deal with the said land. The sale and purchase agreement on 18th March 1983 and the assignment of his interest on 20 April 1983 and the now held null and void circumstances surrounding the sale and purchase illustrates the fraudulent interest of TZ not to honour his part of the bargain in the joint venture agreement with GP.

It is pertinent to note here that I felt that two of the matters raised by the respondents ought not to be given consideration. One was the issue of the different spacing and signatures and since the third respondent himself could not verify the authenticity of the originals, I held that this allegation should be disregarded. The other was the fact that TZ was in Singapore on the day the power of attorney was executed. I felt that exhibit WM4 did not really establish this point.

It has been held in *Registrar of Titles, Johore v. Temenggong Securities Ltd.* [1976] 2 MLJ page 44 that the purpose of a private caveat is to preserve the *status quo* pending the taking of timeous steps by the applicant (caveator in this case) to enforce his claim to an interest in the land by proceedings in the Courts. The respondents had in fact filed an action for specific performance vide Kota Bharu Originating Summons No. 278/84 by either ZH or the administrators of TZ's estate on the joint venture agreement.

For the reasons given, it is abundantly clear that the applicant's grounds must fail in view of the fact that the respondents had a caveatable interest in the said land under the joint venture agreement and I held that the rights of the respondents to the said land ought to be protected by the caveat and accordingly dismissed the application to remove it with costs.

Also found at [1986] 1 CLJ 612